

State of Alaska FY2004 Governor's Operating Budget

Department of Natural Resources Title Acquisition & Defense Component Budget Summary

Component: Title Acquisition & Defense

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Component Mission

To facilitate the acquisition, acceptance, conveyance, and defense of land or an interest in land on behalf of the State of Alaska.

The work accomplished by the Title component is intended to accomplish five major outcomes:

1. Acquire ownership (statehood entitlement and more)
2. Secure clear title
3. Issue clear title documents under various disposal authorities to the private sector, Municipalities and other governmental entities.
4. Defend State title
5. Maintain administrative records of State ownership

The outcomes of this component are basic mandates of any state in the Union. The Constitution of Alaska in Article VIII sets forth the policy concerning natural resources. Sec. 6 states as follows: "State Public Domain...The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain." These outcomes, therefore, are expectations of the public to acquire and defend the State's valuable assets of land and the associated resources as any prudent person would manage his or her own personal assets.

Component Services Provided

The tasks associated with the mission of this component are fundamental tasks of doing business as a State. However, the ownership of land and its related resources such as timber, minerals and oil and gas form the economic base for the State of Alaska. As Alaska attained statehood, the U.S Congress had little money to give to the new State, but recognized the value of land and resources and thus allocated up to 106.2 million acres of land under a variety of federal land entitlement authorities related to statehood. Additionally, as an incident of statehood under the equal footing doctrine we received title to approximately 65 million acres of shorelands, tidelands, and submerged land, which make up our inland waterbodies and marginal seas. Finally, we are acquiring title by direct purchase, donation, escheat, condemnation and grants under special congressional legislation. Congress also extended the offer of a grant of easement for public access across vacant unappropriated public lands under RS 2477.

The title Acquisition and Defense component includes five projects:

- Acquire Land (or an interest in land)
- Provide Title Reports
- Issue Conveyance Documents
- Title Defense
- Maintain Records of State Ownership

The Acquisition of Land or an Interest in Land Project deals with the following:

1. Statehood land entitlement - this category of acquisition deals with acquiring land from the federal BLM. This requires the review and negotiation of title documents as necessary prior to acceptance of title; appeals as necessary; recordation and security of original title documents; acreage accountability; maintenance of computer and hard copy records; and development and maintenance of the Conveyance Priority List based on designated priorities and needs of various State agencies.
2. Other State Lands and Limited State Holdings. Most other agencies do not have the authority to hold land title. Thus, when they purchase or are given land, the Division must review and complete the required title documents to ensure that clear title is acquired and maintained. For example, the Department of Fish and Game acquires weir or boat launch sites using federal funds; many rural communities acquire armory sites; etc. This category includes two different subcategories:

- Other State Lands (OSL) - This category of acquisitions encompasses a variety of fee simple land acquisitions performed by the Department of Natural Resources on its own behalf or on behalf of any other state agency that lacks direct acquisition authority. Examples of the most common acquisition methods include direct purchase, donations, escheat, condemnations and grants under special congressional legislation. This also includes Exxon Valdez Oil Spill fee simple acquisitions. These require the review of pertinent title documents, title insurance documents, ownership records, court documents, etc., the acceptance of title on behalf of the State of Alaska, recordation and security of original title documents, issuance of management rights and maintenance of computer and hard copy records.
- Limited State Holdings (LSH) - This category of acquisitions constitutes less than fee title interest representing a variety of interests such as easements, airspace easements, clear zone easements, leases, fish weir permits, conservation easements, equitable servitude, etc. These title documents require the same review, acceptance, recordation, managements rights and maintenance as OSLs.

The Provide Title Reports Project deals with:

1. Oil and Gas area wide lease sales
2. Disposal of fee title
3. Complex title issues not discernable from the computer records

Title reports are completed to ensure that the State still owns the land or resource and that no cloud has encumbered the title. Often the complex title reports require in depth research to determine the exact interest retained by the State if any (example old Valdez townsite). Title reports are always completed as part of Oil and Gas Lease Sales. Title reports identify the exact State ownership for large projects such as the TAPS renewal report and the Gasline report

The Issue Conveyance Documents Project deals with: The issuance of Patents and Quit Claim Deeds Release of Reserve Interest- These documents are a result of completion of all requirements of a disposal authority to pass title to private individuals, corporations and any other entity in the private sector; Municipalities and/or Boroughs and any governmental entity. This project provides consistency in reservations, wording format, authorities and a final title check to ensure clear title is passed. This project also issues corrective documents as necessary to resolve occasional technical or clerical errors.

Title Defense Project

Defending state title against challenges is a fundamental responsibility of the state. The state reviews all title decisions - conveyance to the state, ANSCA corporations, etc. - to ensure that state and public interests are protected. That is, BLM decisions are reviewed to ensure that access to public land or state title is not compromised by the decision. Over the past years, the state has negotiated changes to approximately 15% of BLM decisions to protect state interest. Specifically, this project accomplishes the following:

1. Respond to litigation - This category requires working with the Attorney General assigned to the case and providing technical research data to the AG which includes title documents, case files, summary of actions, maps and anything necessary to support the AG.
2. Completion of Mental Health Trust Lands Settlement - This category requires correction of title documents, formal determination of replacement lands and any action needed to fulfill the Mental Health Trust Lands Settlement.
3. Respond to School Trust Lands Litigation - This category requires working with the Attorney General assigned to work the case and the Depts. Of Revenue and Education as well as the beneficiaries. (This work is funded through a separate appropriation. Funding for this work is not included in this component.)
4. Review Native Allotments - This category requires the review of numerous BLM documents issued concerning Native Allotment claims, which may affect State land title and public access. Respond to the Aguilar court case stipulations as to hearings. Provide technical research and documents to the Attorney General assigned the case. Provide comment to AG on settlement negotiations.
5. Reconvey land wrongfully conveyed to the State - This category primarily affect Native Allotment claims where BLM has conveyed the land title to the State. After initial review the State in most cases agrees to voluntarily reconvey the land following the State's decision and public notice process. BIA has assigned two staff members to work on these cases with guidance and final approval provided by State staff.
6. Review ANCSA decisions - This category requires the review of ANCSA decisions to determine if BLM's decision affects State title. If problems exist we negotiate with the corporations and BLM. If resolutions cannot be reached the state files an appeal. During the appeal process staff provides technical research and documents to the Attorney General assigned to case and comment on any proposed settlement.
7. Review Sec. 17(b) of ANCSA easements - This category requires the review and coordination of State comments affecting public access across Native Corporation lands to public lands. If problems exist we negotiate with the corporations and BLM. If resolution cannot be reached the state appeals the decision. During the appeal process

staff provide technical research and support documentation to the Attorney General assigned to the case and comment on any proposed settlement.

8. **Navigability** - This category performs research prior to BLM making an administrative decision on which water bodies are navigable. This requires coordination with BLM's work schedule in order to influence their decision. If the decision disagrees with the State's research, the state may elect to file a quiet title action. Funding for this work is not included in this component.
9. **RS2477 assertions** - This category involves the assertion of ownership or a granted easement to trails and roads which provide public access between communities, along and to waterways and to various geographic areas of Alaska. In Revised Statute 2477 Congress offered a grant of easement across vacant, unreserved public lands until the authority was terminated by FLMPA in 1976. The federal government is attempting to change the rules of the grant offered by Congress requiring constructed modern roads similar to those found in the "lower 48". The State continues to assert a claim to these easements where appropriate. (See RS2477/Navigability component)
10. Any challenge to the State's Title.

The Maintain Records of State Ownership Project deals with the following:

1. Maintain case files (hard paper copies of all documents related to the acquisition and/or the disposal of a parcel of land documenting reservations and covenants attached thereto). Maintain documents in an orderly and logical manner in order to retrieve the information in an efficient manner.
2. Maintain and enter into the State of Alaska's computer system LAS data reflecting ownership of land and or an interest in land. A special title sub-system has been developed for the statehood entitlement, which must be maintained.
3. Scan and maintain certain records for access over the Internet and retrieval of information.
4. Ensure that title acquisitions and disposals are forward for notation to the graphic record and review final product for quality control.

Component Goals and Strategies

Encourage resource development that creates Alaska jobs and ensures economic growth in all regions of the state.

- To acquire land and resources for development, land disposals and for public use
- Secure clear Title
- Issue marketable title through conveyance documents to the private sector and other government entities.
- Review and respond to all Native Allotment and ANCSA conveyance decisions by the federal government in order to defend the States land title and to reserve access to public land and waters.
- Support Navigability assertions/litigation

Additional output and measurement information is available upon request from DNR Admin Services Manager (Nico Bus 465-2406).

Key Component Issues for FY2003 – 2004

1. **Navigability.** The state owns title to all navigable waters in Alaska. However, there is no easy method to settle title disputes concerning navigable waters. The only method is to litigate a quiet title action, typically against the federal government. As a result, final legally certified title has only been acquired on 13 waterbodies statewide. The 2002 legislature passed SB 219, which established a joint State-Federal Navigable Waters Commission. Companion legislation or other non-legislative federal initiatives are being considered by BLM. A FY 04 CIP proposal would fund the department to take advantage of this unusual opportunity to solve this long-standing problem. (Navigability determinations are funded through a separate component. However, the staff is within this component and the issue is described here for clarity.)

2. **The review of Sec. 17(b) of ANCSA** involves the identification and reservation in conveyance documents to Native corporations for easements to the United States for access across ANCSA private land to public lands and public waters. There are two potential issues:

(A) Management of 17(b) Easements. These easements are reserved to the United States in conveyance

documents issued to ANCSA Native corporations. The federal Interior Department is attempting to pressure the State of Alaska to assume management of reserved easement providing access to State lands and State public waters. Management means identifying the location of the easement on the ground, signing the easement to identify it to the public explaining the allow uses to the public, clean up trash, maintain the easement as to brushing, fixing mud spots, maintaining bridges, etc., and resolving trespass. The State of Alaska's position is that the easements are reserved to the United States and it is their responsibility to manage these easements. However, the state recognizes that the number of access disputes the public is experiencing related to this project have been steadily increasing. The department is currently working with the Bureau of Land Management's state office to craft a comprehensive easement management program prototype.

(B) Termination of 17(b) Easements. In Departmental regulations 43 CFR 26.50.4-7(a)(13) if an easement has not been used for the purpose for which it has been reserved, the BLM Director shall terminate the easement effective December 18, 2001, unless it provides access to isolated tracts of public lands or public waters. The implementation of this regulation has no statutory basis. We believe this implementation will have a serious affect on public access in Alaska. Several years ago DNR initiated action to influence the implementation. We expect to continue this work in FY 04.

3. **The School Trust Lands** valuation and litigation is part of the Title Defense Project. The charge of a Breach of Trust issue is part of a larger litigation issue concerning funding of rural schools filed as *Kasayulie v. State of Alaska* Case No. 3AN-97-3782 CIV. However, Judge Reese has ruled on the plaintiffs' Motion for Partial Summary Judgment on Breach of the School Lands Trust, Judge Reese found two breaches of trust (1) the redesignation of school lands in 1978, and (2) the failure to value school lands in 1978. This case is currently in litigation status. Resolution requires significant staff work, in a manner acceptable to the court.

Major Component Accomplishments in 2002

The preceding narrative addresses the tasks that Realty Services undertakes on a daily basis. In addition to meeting these basic mission requirements the unit has completed the following noteworthy special assignments in this fiscal year:

1. Trans-Alaska Pipeline System (TAPS) title review. Staff reviewed title for 3,200 miles of state land, a swath four miles wide and 800 miles long. Completion of this project was essential to the pipeline lease renewal. The results of the project were successfully loaded to the state's website at <http://www.dnr.state.ak.us/cgi-bin/Iris/landrecords?switchform=2>.
2. Proposed Gasline Route title review. Upon completion of the TAPS project, staff successfully undertook the review of all state land contained within the proposed gasline route, four mile wide and approximately 700 miles long. The results of this review can also be found on the state's website at <http://www.dnr.state.ak.us/cgi-bin/Iris/landrecords?hitfield=GAS&switchform=3&search=c17n17e>.
3. Land Disposal Program title reports. The volume of title reports requested in FY02 increased 42% over FY01 in keeping with the department's objective to offer 25,000 acres of state land for sale. Realty Services responded to this demand on time and alerted disposal staff to a number of title clouds that needed to be resolved before the land could be marketed.

Oil and Gas Title Reports. During FY02, Realty Services successfully responded to an Oil and Gas request to expedite the title review process. Staff recognized the need for this request, reprioritized projects and completed the review of approximately 385 sites in two months rather than the four months we would normally have required

Statutory and Regulatory Authority

The Title Component operates under the following statutory authority:

Statutory
 AS38.04.055
 AS38.05.020(b)(8)
 AS38.05.030(c) and (d)
 AS38.05.035(a)(12)

AS38.05.035(b)(9)
AS38.05.035(e)(6)
AS38.05.127(a)(12)
AS38.50.090
AS38.50.150
AS38.95.210

Title Acquisition & Defense
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	1,029.6	920.0	991.1
72000 Travel	6.0	19.2	19.2
73000 Contractual	160.2	138.4	125.7
74000 Supplies	51.9	20.1	25.1
75000 Equipment	10.0	0.0	4.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	1,257.7	1,097.7	1,165.1
Funding Sources:			
1004 General Fund Receipts	978.5	1,050.7	1,050.7
1007 Inter-Agency Receipts	193.4	36.8	114.4
1061 Capital Improvement Project Receipts	85.8	0.0	0.0
1108 Statutory Designated Program Receipts	0.0	10.2	0.0
Funding Totals	1,257.7	1,097.7	1,165.1

Title Acquisition & Defense

Proposed Changes in Levels of Service for FY2004

The DMLW is a participant in the management of Oil and Gas leases and actively manages the surface activities outside of the lease boundaries. In addition, the DMLW provides title reports to the Division of Oil and Gas for all oil and gas lease sales. With the introduction of Shallow Gas Leasing and the expansion of exploration into new and more remote areas of the North Slope, current staffing levels are inadequate to address these programs. This increment requests one additional Natural Resource Specialist II position to supplement the existing program.

Oil and Gas Bonus Bids and Lease Rentals. The state may only lease land where it owns the subsurface rights. Before a lease may be issued, DNR must conduct a title search. Any delay in completing the title search delays the time when the lease is issued, the state receives funds after the lease sale, and when industry exploration may begin. With the onset of shallow gas leasing program, and depending on the level of leasing for oil and gas, the delay may increase next year. The Department is requesting to add one additional Natural Resources Specialist II to supplement the existing program. The Department is requesting \$77.3 in Interagency Receipts for this increment. The individual would be dedicated to oil and gas title work and would have the effect of minimize delay in issuing leases.

Summary of Component Budget Changes

From FY2003 Authorized to FY2004 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	1,050.7	0.0	47.0	1,097.7
Adjustments which will continue current level of service:				
-Annualize FY2003 COLA Increase for General Government and Supervisory Bargaining Units	0.0	0.0	0.3	0.3
Proposed budget decreases:				
-Eliminate Statutory Designated Program Receipts	0.0	0.0	-10.2	-10.2
Proposed budget increases:				
-Increase Revenues from Oil & Gas Bonus Bids and Lease Rentals	0.0	0.0	77.3	77.3
FY2004 Governor	1,050.7	0.0	114.4	1,165.1

Title Acquisition & Defense

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u>	<u>FY2004</u>		
	<u>Authorized</u>	<u>Governor</u>		
Full-time	13	15	Annual Salaries	758,921
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	267,950
			<i>Less 3.48% Vacancy Factor</i>	(35,771)
			Lump Sum Premium Pay	0
Totals	13	15	Total Personal Services	991,100

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Clerk II	1	0	0	0	1
Natural Resource Mgr II	1	0	0	0	1
Natural Resource Mgr III	1	0	0	0	1
Natural Resource Spec I	4	0	0	0	4
Natural Resource Spec II	4	1	0	0	5
Natural Resource Spec III	2	0	0	0	2
Natural Resource Tech II	1	0	0	0	1
Totals	14	1	0	0	15